IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

PARK PLACE, INC.,	)	CASE NO. C79-1251
Plaintiff,	)	
	)	Judge John M. Manos
v.	)	
CITY OF CLEVELAND,	)	MEMORANDUM OF OPINION
et al.,	)	
Defendants.	)	

On June 22, 1979 the plaintiff, Park Place, Inc., filed the above-captioned case seeking declaratory and injunctive relief against defendants, City of Cleveland and Mary Vodicka, Director of Port Control and Acting Airport Commissioner, alleging that the plaintiff was compelled to pay an unreasonable and discriminatory charge for the right to provide courtesy shuttle bus service to transport the plaintiff's parking lot customers to and from the Cleveland Hopkins

International Airport (hereinafter, Airport) and the plaintiff's parking lot.

On August 11, 1980 the plaintiff filed a motion for summary judgment to which affidavits were attached pursuant to Fed. R. Civ. P. 56, in which the following facts were set forth:

Park Place is an owner-operator of parking lot facilities located within one mile of the airport complex. Customers of Park Place park their cars and are provided shuttle bus service, without a separate charge in addition to the parking fee, to and from the airport terminal buildings. The cost and expense of providing the shuttle service is an overhead expense of Park Place.

On February 8, 1978 the City of Cleveland adopted Resolution No. 039-78 which provided the Director of Port Control with authority to issue permits to operators of courtesy vehicles at the Airport for a term not to exceed six months at a fee of not less than

$250 per vehicle. The Resolution also provided for the designation and restriction of the location of waiting and pick-up areas for such vehicles for the purpose of ameliorating traffic congestion at the Airport. Park Place was assigned two such waiting and pick-up areas and paid the required fees on at least two of the six vehicles it was operating. Various other businesses which provided courtesy shuttle service to the Airport, comprised principally of motels and hotels, were required to comply with the resolution as well.

On February 12, 1979 the City of Cleveland enacted Ordinance No. 1101-78 which provided the Director of Port Control with authority to enter into an agreement with Park Place for a period not to exceed two years for the furnishing of courtesy vehicles to and from the Airport and the Park Place parking facilities. The annual fee to be paid the city for the rights granted under

the contract was set at $10,000 or 5% of the gross revenues of Park Place whichever proved greater. Although a direct competitor of Park Place was required to enter into a similar agreement, the hotels and motels which offered courtesy shuttle bus services continued to operate under Resolution No. 039-78.

As a protective measure, Park Place entered into the above agreement reserving the right to challenge the validity of any payments made thereunder. Pursuant to such reservation Park Place commenced the instant suit.

In its motion for summary judgment Park Place contended that Ordinance No. 1101-78: (1) imposed an unreasonable burden on interstate commerce; and (2) arbitrarily discriminated in favor of hotels and motels which had been excluded from the scope of the Ordinance and were, therefore, permitted to operate shuttle services under Resolution No. 039-78.

In an opinion issued on September 17, 1980 this court denied the plaintiff's motion for summary judgment and held as a matter of law that the charge imposed on Park Place by Ordinance No. 1108-78 was a reasonable levy and did not constitute an impermissible burden on interstate commerce. Since no evidence had been presented at that date as to whether Ordinance No. 1101-78 arbitrarily discriminated in favor of hotels and motels because such businesses had been excluded from the scope of the Ordinance, this court also held that the issue of whether the Ordinance constituted a denial of equal protection presented a genuine issue of material fact which precluded granting plaintiff's motion for summary judgment.

The case is now before this court on the defendants' motion for summary judgment. For the reasons which follow the defendants' motion is granted.

On November 6, 1980 the parties to this action filed a stipulation of facts setting forth the operations of all other shuttle transportation operators currently authorized to use the facilities of the Airport. This stipulation of facts clearly establishes that the services offered by Park Place are qualitatively and quantitatively different from those offered by other shuttle service operators and, therefore, entitles the defendant to summary judgment on the equal protection claim raised by Park Place.

The stipulation of facts establishes that Park Place transports its parking lot customers to and from the Airport as a function of its business which sole purpose is provision of off-Airport auto parking and transportation to the Airport for Airport patrons. In return for the fee paid pursuant to Ordinance No. 1101-78, which is also paid without objection by Park'N Fly of Ohio, Inc., a direct competitor of Park Place, Park Place

receives the right to the nonexclusive use of two waiting areas, identified by either signs or stanchions which it supplies, and is permitted to operate two courtesy telephones in the Airport terminal.

Regarding other shuttle operators,[1] the stipulation of facts shows that none are given any designated waiting areas nor are they given the privilege of telephone service in the Airport terminal. Some of these services are permitted to post signs and a few are allowed telephone service in the Airport baggage area.[2] None of these courtesy vehicle services, however, other than Park'N Fly, receives the same combination of privileges as Park Place.

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1 Falling into this classification are: (1) shuttle service vehicles owned and operated by motels and hotels; (2) services operated by automobile rental agencies; (3) limousine services; and (4) taxicab services. None of these businesses offer services comparable to those of Park Place.

2 The following firms currently operate courtesy vehicle service at the Airport and are allowed the privileges listed:

1. Howard Johnson Lakefront Motor Lodge - no sign, phone in baggage area;

The court in Toye Bros. Yellow Cab Co. v. Irby, 305 F.Supp. 911 (E.D.La. 1969), affirmed 437 F.2d 806 (3d Cir. 1971) was presented with an equal protective challenge to an ordinance which regulated the use of airport facilities by courtesy shuttle service operators

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2 (cont'd.)

2. Thomas Limousine - no sign, no phone;
3. Thrifty Rent-A-Car - no sign, no phone;
4. A & D Limo Service - 2 signs, no phone;
5. Township Cab Co., Inc. - no sign, no phone;
6. Sheraton Airport Inn - 2 signs, phone in baggage area;
7. Vancouver Enterprises, Inc. - no sign, no phone;
8. Holiday Inn Cleveland Airport - 2 signs, phone in baggage area;
9. Harley Hotels - 1 sign, phone in baggage area;
10. Ramada Inns Cleveland Airport - 2 signs, phone in baggage area;
11. Marriott Inn - 2 signs, phone in baggage area;
12. Liberty Limo & Car Rental, Inc. - 1 sign, no phone;
13. Travel Lodge - no sign, phone in baggage area;
14. Holiday Inn (Strongsville) - 1 sign, phone in baggage area;
15. B & A Associates, Limited - 1 sign, phone in baggage area;
16. Airport Hilton Inn - 2 signs, phone in baggage area;
17. Dollar Inn - 1 sign, phone in baggage area;
18. American International Rent-A-Car - 2 signs, no phone;
19. Hopkins Airport Limo Service (pays permit fees and separately rents space) - 5 signs, phone in office;
20. Howard Johnson's Airport West Motor Lodge - 1 sign, phone in baggage area.

which is nearly identical to the challenge raised by Park Place in the instant case. The ordinance at issue in Toye was claimed to deny equal protection to courtesy shuttle service operators, which offered services comparable to those provided by Park Place, because they were required to pay a higher fee for the use of airport facilities than that imposed on the courtesy transportation services maintained by motels and hotels. The court found that the hotels and motels dispatched vehicles to the airport for the purpose of picking up and delivering incoming and departing guests. Consequently, this purpose limited the potential volume of business to be done by hotel and motel shuttle transportation services. Accordingly, the court held that rational grounds existed for the discrimination in fees imposed by the ordinance and this finding was undisturbed on appeal.

The rationale of the Toye decision is applicable to the instant case. Other than

Park'N Fly, no other courtesy transportation service operating at the Airport provides services similar to those provided by Park Place. Consequently, this court holds that rational grounds exist for the discrimination in fees imposed by Ordinance No. 1101-78 and that the defendants are entitled to summary judgment on the equal protection allegations of Park Place.[3]

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3 In the previous opinion issued in the above-captioned case this court held that although the equal protection claim of Park Place presented a genuine issue of material fact precluding summary judgment, the case of Park'N Fly of Texas, Inc. v. City of Houston, 327 F.Supp. 910 (S.D. Tex. 1971), raised a distinguishable claim and was not dispositive of of the allegations of Park Place. This court incorporates the pertinent portions of that holding in the decision reached today:

> In support of its contention that Ordinance No. 1101-78 arbitrarily discriminates in favor of motel and hotel shuttle bus service operations Park Place relies on Park'N Fly of Texas, Inc. v. City of Houston, 327 F.Supp. 910 (S.D. Tex. 1971), which held unconstitutional a city ordinance which prohibited parking lot companies and car rental agencies, which provided transportation between their facilities and the Houston Municipal Airport, from using favorable locations to pick-up and deliver passengers while providing full use of these positions to the city's parking concessionaire.

The defendant city has raised a permissive counterclaim pursuant to Fed. R. Civ. P. 13(b) regarding the failure of Park Place to pay certain per vehicle charges which it was required to pay during the period it was subject to Resolution No. 039-78. The city also claims fraud. Considerations of judicial economy and fairness to the parties, as well as the fact that the counterclaim presents questions predominantly of state law, requires this court to dismiss the

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3 (cont'd.)

Specifically, the ordinance was held to deny equal protection due to the city's parking concessionaire being authorized to deposit passengers at a more favorable location than permitted parking lot companies and car rental agencies.

Ordinance No. 1101-78, however, is clearly distinguishable from the ordinance at issue in Park'N Fly. It does not deny Park Place access to any favored positions at the Airport, nor does it reserve such a location to a parking concession operated by the city. Indeed, the Ordinance was designed so that Park Place could be assigned a favored position at the Airport, in return, of course, for the payment of a fee. Thus, Park'N Fly does not control the determination of the discrimination claim of Park Place.

counterclaim without prejudice pursuant to Fed. R. Civ. P. 42, See: United Mine Workers of America v. Gibbs, 383 U.S. 715, 86 S. Ct. 1130 (1966).

Fed. R. Civ. P. 56(c) provides that a motion for summary judgment shall be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Smith v. Hudson, 600 F.2d 60 (6th Cir.), cert. denied 444 U.S. 996, 100 S. Ct. 495 (1979); Bryant v. Commonwealth of Kentucky, 490 F.2d 1273 (6th Cir. 1974); Daily Press Inc. v. United Press Int'l., 412 F.2d 126 (6th Cir.), cert. denied 396 U.S. 990, 90 S.Ct. 480 (1969).

Accordingly, the defendants' motion for summary judgment is granted and their counterclaim is dismissed without prejudice.

IT IS SO ORDERED.

/s/ John M. Manos
UNITED STATES DISTRICT JUDGE

81-3029

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PARK PLACE, INCORPORATED,
Plaintiff-Appellant

v. ORDER

CITY OF CLEVELAND; CITY HALL, MARY VODICKA, Director of Port Control, Acting Commissioner of Cleveland Hopkins International Airport,

Defendants-Appellees

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Before: ENGEL, Circuit Judge; WEICK, Senior Circuit Judge, and COHN, District Judge*

The essence of plaintiff's complaint in the district court invoking the federal question subject matter jurisdiction of the court under 28 U.S.C. § 1331 and alleging a violation of Article 1, Section 8 of the Constitution and of the Fourteenth Amendment was that the defendant City of Cleveland, in the operation of the Cleveland Hopkins International

*Hon. Avern Cohn, Judge, United States District Court for the Eastern District of Michigan, sitting by designation.

Airport, had violated the plaintiff's rights to due process and equal protection by unlawfully and coercively extracting from the plaintiff as a condition of doing business, a contract for providing shuttle bus service between plaintiff's nearby parking lot and the airport facility at a rate which it claimed was grossly and arbitrarily greater than the fees charged others for the same and comparable services.

In an opinion filed in the district court on December 16, 1980, United States District Judge John M. Manos directed entry of summary judgment in favor of the defendants of the basis that upon the undisputed and material evidence before him, there was no showing that Ordinance No. 1101-78 either imposed an unreasonable burden upon interstate commerce or arbitrarily discriminated in favor of hotels and motels which had been excluded from the scope of that ordinance and which were, therefore, permitted to operate

their shuttle services under a separate resolution adopted by the City of Cleveland. It appeared to Judge Manos, from the evidence and from the stipulation of facts, that the services offered by plaintiff Park Place were qualitatively and quantitatively different from those offered by other shuttle service operators and, therefore, entitled the defendant to summary judgment on the equal protection claim raised by Park Place. It further appeared that the fee charged was the same as that which was paid by another parking lot operator, Park'N Fly of Ohio, Inc., a direct competitor with similar services. For these reasons and for the other reasons set forth by Judge Manos in his opinion,

IT IS ORDERED that the judgment of the district court is affirmed.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman
Clerk

81-3029

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PARK PLACE, INCORPORATED,

Plaintiff-Appellant,

v. ORDER

CITY OF CLEVELAND: CITY HALL: MARY VODICKA, Director of Port of Control Acting Airport Commissioner of Cleveland Hopkins International Airport,

Defendants-Appellees.

_____/

Before: ENGEL, Circuit Judge, WEICK, Senior Circuit Judge, and COHN, District Judge*

No judge in regular active service of the court having requested a vote on the suggestion for a rehearing en banc, the petition for rehearing filed herein by the plaintiffs-appellants has been referred to the panel which heard the original appeal. Upon

*Hon. Avern Cohn, Judge, United States District Court for the Eastern District of Michigan, sitting by designation.

consideration of said petition, the court finding no issues presented which have not been previously considered,

IT IS ORDERED that the petition for rehearing en banc be and it is hereby denied.

ENTERED BY ORDER OF THE COURT

/s/ JOHN P. HEHMAN
Clerk

Ord. No. 1101-78

An emergency ordinance authorizing and directing the Director of Port Control to enter into an agreement with Park Place, Inc., to provide a parking facility near Cleveland Hopkins International Airport including the use of courtesy vehicles, for the Division of Airports, Department of Port Control.

Whereas, in furtherance of the public purpose of promoting and aiding air navigation and commerce at Cleveland Hopkins International Airport, the City is desirous of providing for adequate and convenient parking facilities for its patrons; and

Whereas, Park Place, Inc., operates a parking lot near Cleveland Hopkins International Airport for the convenience of its customers; and

Whereas, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it ordained by the Council of the City of Cleveland:

Section 1. That any provisions of the Charter and Ordinances to the contrary notwithstanding, the Director of Port Control, with the approval of the Board of Control, be and he hereby is authorized and directed to enter into an agreement with Park Place, Inc. for a period not to exceed two (2) years for the furnishing of courtesy vehicles for air passengers and other users of Cleveland Hopkins International Airport. The fee to be paid to the City by Park Place, Inc., for the rights granted shall be Ten Thousand Dollars ($10,000.00), or five percent (5%) of all gross revenues per year, whichever is greater.

THE CONSTITUTION OF THE UNITED STATES

ARTICLE I, Section 8, [1]. The Congress shall have Power . . .

[3] To regulate Commerce with foreign Nations, and among the several States. . . .

AMENDMENT XIV

Section 1. . . .

No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.